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The Butler Group, Inc. and Kentucky State District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO.
Case 9-CA-32665

February 23, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge, and an amended charge, filed by the Kentucky State District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (the Union), the General Counsel of the National Labor Relations Board issued a complaint on July 6, 1995, against The Butler Group, Inc. (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On September 15, 1995, the Respondent's trustee, by counsel, filed a response to complaint and notice of hearing, generally denying the complaint's allegations "due to lack of knowledge and belief." The Respondent filed an amended answer to the complaint on November 13, 1995, admitting the allegations contained in the complaint.¹

On November 27, 1995, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support, with exhibits attached. On November 29, 1995, the Board issued an order transferring this proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent has not filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its amended answer to the complaint, the Respondent admitted the allegations contained in the complaint. Therefore, by its amended answer to the complaint, the Respondent has admitted that there is no dispute with regard to any relevant and material

¹ According to the Respondent's amended answer it commenced voluntary bankruptcy proceedings under Chapter 11 of Title 11 of the United States Bankruptcy Code on April 4, 1995, and on June 8, 1995, the case was converted to a case under Chapter 7 of Title 11 of the United States Bankruptcy Code. We note that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. Board proceedings fall within the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. See *Phoenix Co.*, 274 NLRB 995 (1985).

facts pertinent to establishing the violations alleged in the complaint. Accordingly, all the allegations in the complaint will be considered admitted to be true, and we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with a place of business in Louisville, Kentucky, has been engaged in the manufacture of store fixtures and sign displays. During the 12 months ending July 6, 1995, the Respondent sold and shipped from its Louisville, Kentucky facility goods valued in excess of \$50,000 directly to points outside the Commonwealth of Kentucky. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Bargaining Unit and the Union's Representative Status

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of [Respondent], including temporary employees employed at its Louisville, Kentucky facility, excluding all office clerical employees, designers, salesmen, engineers, professional employees, guards and supervisors.

At all material times, based on Section 9(a) of the Act, the Union has been designated the exclusive collective-bargaining representative of the unit and has been recognized as the representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective June 1, 1992, through May 31, 1995.

B. The Refusal to Bargain

About September 22, 1994, the Union, in writing, requested that the Respondent furnish the Union with the following information:

A list of products or materials subcontracted out to outside firms, including the names of the outside firms, product process and parts.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive col-

lective-bargaining representative of the unit employees. Since about November 28, 1994, the Respondent has failed and refused to furnish the Union with the information requested. By this conduct, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its unit employees in violation of Section 8(a)(5) and (1) of the Act.

About October, November, and December 1994, and about February 2, 1995, the Respondent laid off certain unit employees.² From about October 1994 through February 2, 1995, the Respondent used supervisors to perform bargaining unit work. Further, about February 22, 1995, the Respondent denied an agent of the Union access to its facility for the purpose of representing employees in the unit. The conduct set forth above relates to wages, hours, and other terms and conditions of employment that are mandatory subjects for purposes of collective bargaining. The Respondent engaged in the conduct described above without giving prior notice to the Union, and without affording the Union an opportunity to bargain with respect to this conduct and its effects. Also, the Respondent has failed to continue in full force and effect all the terms of the agreement which was effective June 1, 1992, through May 31, 1995, by failing and refusing to process grievances filed by the Union. By the above-described conduct, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By failing and refusing to provide necessary and relevant information to the Union; by laying off certain unit employees about October, November, and December 1994, and about February 2, 1995; by using supervisors to perform bargaining unit work from about October 1994 through February 2, 1995; by denying access to its facility to an agent of the Union for the purpose of representing unit employees, all without giving prior notice to and without affording the Union and opportunity to bargain; and by failing to continue in full force and effect all the terms of the above-described agreement by failing and refusing to process grievances filed by the Union, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action de-

² The identities of these unit employees will be determined at the compliance stage of this proceeding.

signed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed to provide to the Union information requested by the Union that is relevant and necessary to the Union's performance of its duties as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish to the Union the requested information.

Further, having found that the Respondent laid off certain unit employees in October, November, and December 1994, and about February 2, 1995, without giving prior notice to the Union and an opportunity to bargain over the layoff decisions and their effects, we shall order the Respondent to bargain with the Union concerning the layoff decisions and their effects, to offer the employees immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits resulting from the unilateral layoffs. Backpay shall be based on the earnings that the employees normally would have received during the applicable period, less any net interim earnings, and shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Also, having found that the Respondent violated Section 8(a)(5) and (1) by denying an agent of the Union access to its facility for the purpose of representing employees in the bargaining unit, we shall order the Respondent to allow such access to its facility.

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to continue in full force and effect all the terms of the agreement between the Respondent and the Union effective from June 1, 1992, through May 31, 1995, by failing and refusing to process grievances filed by the Union, we shall order the Respondent to process grievances filed by the Union.

ORDER

The National Labor Relations Board orders that the Respondent, The Butler Group, Inc., Louisville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of the following bargaining unit employees by failing and refusing to provide the Union with certain requested information that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of unit employees:

All production and maintenance employees of The Butler Group including temporary employees employed at its Louisville, Kentucky, facility, excluding all office clerical employees, designers, salesmen, engineers, professional employees, guards and supervisors.

(b) Laying off bargaining unit employees without notifying the Kentucky State District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and affording that Union a reasonable opportunity to bargain about the layoff decisions and their effects on the unit employees.

(c) Using supervisors to perform bargaining unit work without giving prior notice to the Union, and without affording the Union an opportunity to bargain.

(d) Denying an agent of the Union access to its facility for the purpose of representing employees in the bargaining unit without giving prior notice to the Union and without affording the Union an opportunity to bargain.

(e) Failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of the unit employees by failing to continue in full force and effect all the terms of the agreement between the Respondent and the Union effective from June 1, 1992, through May 31, 1995, by failing and refusing to process grievances filed by the Union.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with information that is necessary and relevant to the performance of its duties as the exclusive bargaining representative of the unit employees, including the information requested in writing about September 22, 1994.

(b) On request, bargain with the Union as the exclusive collective-bargaining representative of the bargaining unit employees concerning the unilateral decisions to lay off employees about October, November, and December 1994, and about February 2, 1995, and to use supervisors to perform bargaining unit work from about October 1994 through February 2, 1995, and the effects of those decisions.

(c) Offer the unilaterally laid-off employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make the employees whole for any loss of earnings and other benefits suffered as a result of the lay-offs, in the manner set forth in the remedy section of the decision.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all

payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Allow access to its facility by an agent of the Union for the purpose of representing employees in the bargaining unit.

(g) Continue in full force and effect all the terms of the agreement between the Respondent and the Union effective from June 1, 1992, through May 31, 1995, by processing grievances filed by the Union.

(h) Post at its facility in Louisville, Kentucky, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 23, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the Union by failing to provide necessary and relevant information

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

to the Union as the exclusive collective-bargaining representative of the following bargaining unit:

All production and maintenance employees of The Butler Group including temporary employees employed at its Louisville, Kentucky, facility, excluding all office clerical employees, designers, salesmen, engineers, professional employees, guards and supervisors.

WE WILL NOT lay off bargaining unit employees without notifying the Kentucky State District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and affording that Union a reasonable opportunity to bargain about the layoff decisions and their effects on the bargaining unit employees.

WE WILL NOT use supervisors to perform bargaining unit work without giving prior notice to the Union, and without affording the Union an opportunity to bargain.

WE WILL NOT deny an agent of the Union access to our facility for the purpose of representing employees in the bargaining unit without giving prior notice to the Union, and without affording the Union an opportunity to bargain.

WE WILL NOT fail and refuse to bargain with the Union as the exclusive collective-bargaining representative of the unit employees by failing to continue in full force and effect all the terms of our agreement with the Union effective from June 1, 1992, through May 31, 1995, by failing and refusing to process grievances filed by the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with information that is necessary and relevant to the performance of its duties as the exclusive bargaining representative of the unit employees, including the information requested in writing about September 22, 1994.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of the bargaining unit employees concerning the unilateral decisions to lay off employees about October, November, and December 1994, and about February 2, 1995, and the effects of those decisions.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of the bargaining unit employees concerning the unilateral decision to use supervisors to perform bargaining unit work, and the effects of that decision.

WE WILL offer the unilaterally laid-off employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make the employees whole for any loss of earnings and other benefits suffered as a result of the layoffs, less any net earnings, plus interest.

WE WILL allow an agent of the Union access to our facility for the purpose of representing employees in the bargaining unit.

WE WILL continue in full force and effect all the terms of our agreement with the Union effective from June 1, 1992, through May 31, 1995, by processing grievances filed by the Union.

THE BUTLER GROUP, INC.